IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2147 of 2001

to

FIRST APPEALNo 2157 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

AMRUTBHAI CHUNIBHAI

Appearance:

MR AD OZA, GP,for Petitioners

MR PV NANAVATI with MR Devandra A Patel for Respondents.

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE J.R.VORA

Date of decision: 15/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this group of 11 appeals, under section 54 of the Land Acquisition Act, 1894 (Act for short), the appellants, State Authorities, have questioned the common judgment and award passed by the learned Second Extra Assistant Judge and Special Judge (LAR), Ahmedabad Rural, at Mirzapur, Ahmedabad, dated 3.12.99 in Land Reference Cases No.130/91 to 134/91 and 136/91 to 141/91.

Some of the important and relevant facts may be articulated, at the outset, giving rise to this group of appeals.

Pursuant to notification under section 4(1) the Act, dated 2.1.86, the following lands of village Dantali, Tal & Dist: Gandhinagar were sought to be acquired for the purpose of Miranda Main Canal, by Executive Engineer, Miranda Project, Ahmedabad:

Sr.No.	L.A.Case No.	Block No.	Area in sq. mt.
1.	131/91	526	429
2.	130/91	538	2023
3.	132/91	574	416
4.	133/91	541] 544]	5369
5.	134/91	573	2196
6.	136/91	537	6992
7.	137/91	540	2833
8.	138/91	532	7892
9.	139/91	539	2833
10.	140/91	527	3045
11.	141/91	542	1113

Notification under section 6(1) of the Act was published on 23.12.86. The Special Land Acquisition Officer, by his award, dated 1.12.88, fixed the market price of the lands sought to be acquired at the rate of Rs.2.50 per sq. mtr. The lands covered under the notifications are agricultural properties.

The respondents herein are the original-claimants, owners of the lands, who made references under section 18 of the Act, claiming an amount of Rs.100 per sq. mtr. for their acquired lands, inter alia, contending that the

market price fixed by the Land Acquisition officer is insufficient and inadequate. They, also, contended that village Dantali, where acquired lands are situated is progressive and promising due to the infrastructural facilities like, light, water, telephone, road, school and also a big press.

On behalf of the appellant authorities, objections were filed and various contentions came to be raised, by filing written statement, at Ex.10, supporting the price of the land fixed by the Land Acquisition Officer. They contended that the fixity of market price by the Land Acquisition Officer, at the rate of Rs.2.50 per sq. mtr. is quite just and reasonable, in the facts and circumstances of the cases, and the claimants-owners are not entitled to any further amount of compensation.

The claimants placed reliance on the oral evidence of one Amrutlal Chunilal Patel, at Ex.21. They, also, placed reliance on documentary evidence in the form of revenue record, maps, judgments and awards in respect of land in the nearby areas. The opponents, appellants herein, placed reliance on the evidence of three witnesses and also some of the documentary evidence, to which reference will be made by us, hereinafter, as and when required, in course of discussion of the judgment.

The reference Court of Ahmedabad Rural, decided the entire group by a common judgment, whereby, it enhanced the price and granted additional amount of compensation of Rs.52/-, by the judgment and award dated 3.12.99. The reference Court, therefore, found that the claimants are entitled to market price of Rs.2.50 + Rs.52.00 = Rs.54.50 per sq. mtr. The State Authorities, being aggrieved by the common judgment of the reference Court, have filed this group of appeals challenging the legality and validity of enhancement of the market price in respect of the acquired lands.

We have heard the learned Government Pleader and learned advocate Mr. Nanavati appearing for the respondents, at marathon length. We have, also, dispassionately, examined the entire record. We were, also, taken through the record by the learned advocates in course of submissions before us.

After having heard and considering the factual profile and the relevant evidence, we find that the controversy has shrunk down to a very narrow dimension. The main submission of the learned GP has been that the reference Court should not have placed reliance on the award in

respect of Jaspur lands, produced at Ex.50. He has, also, alternatively, submitted that even if it is relied on, then also, the reference Court has committed serious error in awarding additional amount of Rs.52. Both these submissions are, seriously, challenged on behalf of the respondents-original claimants.

We have been taken through the impugned common judgment. Learned GP has drawn our attention to the observations of the reference Court in para 19 and 20 and has contended that the award at Ex.50 is in respect of lands of Jaspur village which is farther than the lands covered under award Ex.118 and, therefore, the reference court ought to have placed reliance on award, at Ex.118. It is in respect of the land situated in village Dantali. The said award was passed on 1.8.96 in LAR No.309/89, whereas the judgment and award, at Ex.50, relied on by the reference court is in respect of the land situated in village Jaspur, which was passed by the same reference Court on 20.6.99. The notification under section 4(1) of the Act, in respect of award Ex.50, was published in December 1985 and part of which was published in January 1986. Notification under section 4(1) of the Act in respect of the lands covered under the award Ex.118 was published on 11.7.83 in which the market price of the acquired land was fixed, in all, at Rs.26.50 whereas, the market price was fixed at Rs.52 in respect of lands of village Dantali by the same reference court.

The reference court upon assessment of the evidence and evaluation of the documents produced on record, placed reliance on the documentary evidence of award produced at Ex.50. It is in respect of the land of village Jaspur which is adjoining land of the claimants. Upon assessment of the evidence and considering the documents, we, also, find that village Jaspur is adjacent to village Dantali. Our view, on this score, is very much reinforced by the documentary evidence and the observations made in map Ex.44 and 45 and also from the deposition of the witness examined by claimant, at Ex.21. Not only that, it is, also, successfully, pointed out from the cross-examination of the witnesses of the appellants-original opponents that block Nos. 532 and 533 and other numbers of the lands acquired of the claimants are quite adjoining. They are, also, very close to block No.359 of Ram Dayal Bhandari of village Jaspur. The award produced at Ex.36 is in respect of the land acquired for the same purpose and finally, this Court had fixed the market price at Rs.52 per sq. mtr. The land of village Dantali covered under Ex.118 are farther than the lands covered under award Ex.50.

The reference Court has, also, reached to the conclusion that Dantali village in which the lands of the original claimants are situated and acquired is more developed than village Jaspur. The Narmada main canal passes through the sim of Jamiyatpura then enters into Dantali and then to Jaspur. It, therefore, follows that topographically, the lands acquired of the claimants and situated in village Dantali is in between village Jaspur and village Jamiatpura and village Jaspur is adjoining to village Dantali, whereas, village Jamiatpura is farther from village Dantali. It is, also, observed by the reference that village Dantali is better situated in so far as geographical location and infrastructural facilities are concerned.

We are, also, satisfied that the observations made by the reference Court in reaching to the conclusion of awarding market price at the additional rate of Rs.52 over and above the amount Rs.2.50 offered by the Land Acquisition Officer are justified, in the facts and circumstances of the case and the evidence on record. The reference Court before reaching to the conclusion and forming opinion in fixing the market price at Rs.54.50 ps. has also considered and examined the awards at Ex.41, 42 and 49. As stated hereinabove, village Dantali, in which land of the claimants are situated is in between village Jamiatpura and Jaspur and more towards the lands of Jaspur. Village Saij is, also, situated near the lands acquired of the claimants. The lands of village Saij came to be acquired by ONGC in 1983 wherein the same reference Court had fixed the market price at Rs.90 per sq. mtr. and upon appeal, this Court had fixed at Rs.80 per sq. mtr. in First Appeal No.7317/95. No doubt, it may be mentioned that village Saij is at a distance of about 3 k.m. from the acquired land of village Dantali. The land of village Dhanaj, also, came to be acquired for the purpose of ONGC in 1986 in LAR No.496/90, situated in Mehsana district, in which the market price fixed was at Rs.90 per sq. mtr. Village Dhanaj is hardly 1 k.m. away from the acquired land of village Dantali. It may, also, be stated, at this stage, that village Khoraj is also a nearby village and lands of village Khoraj had been acquired for the purpose of Railway Line in 1981, wherein, the reference Court, Ahmedabad, in LAR No.2/83, had awarded an amount of Rs.35 per sq. mtr. by virtue award produced at Ex.43.

In our opinion, the reference Court has, rightly, placed reliance on the award produced at Ex.50, since the lands acquired of the claimants and the lands covered by Ex.50

are adjoining lands. The submission that even in the case of Jaspur land covered by the award, at Ex.50, the market price fixed was Rs.52, whereas, the reference Court has awarded additional amount of Rs.52 by way of market price, over and above the amount of Rs.2.50 fixed by the Land Acquisition Officer and, therefore, the market price is required to be reduced to the extent of Rs.2.50 per sq. mtr.

Prima facie, the aforesaid submission may appear to be alluring and captivating, but not sound and convincing when one gets into reality of the facts emerging from the record of the present case. The reference court has considered all the relevant facts and circumstances required under section 23 of the Act and has taken into account the overall picture of the case. The observations of the reference Court that village Dantali is progressive and developing and having infrastructural facilities are supportable from the evidence on record. Not only that, the agricultural lands acquired under the impugned common judgment and wards are fertile lands. It is noticed from the evidence that three crops had been taken and enjoyed by the claimants in the lands acquired before its acquisition. Navneet Prakashan Press is situated in village Dantali covering about 85 vighas of land. Judicial notice, also, could be taken about this Navneet Prakashan which is known and reputed public limited company. This aspect has been examined and considered by the reference Court. Not only that, comparing the lands of village Jaspur and Dantali, assessment of market price more at Rs.2.50 over and above the amount fixed by the reference Court in respect of the lands of Jaspur covered under award Ex.50, in our opinion, in the facts and circumstances of the case in general and in view of the nature of fertility of the land, yield of three crops, the geographical location, topography, nearness to railway station, etc. would, undoubtedly, justify an amount of Rs.2.50 more than what was fixed as market price by the reference court in respect of the lands of Jaspur village. Therefore, the alternative submission that the market price fixed by the reference Court at Rs.54.50 which is Rs.2.50 more than the comparable award produced at Ex.50, is required to be reduced, does not sound appealable and acceptable.

Lastly, as it happens, a drowning man will try to catch a straw, learned Government Pleader, submitted that deduction of 5 per cent from the amount of compensation to the share of Government in respect of new tenure land is not, rightly, considered. It was, therefore, submitted that the reference Court has committed serious

error in not deducting 5 per cent as Government share in view of the legal provision. This submission will not assume any survival value, as admittedly, out of all the lands and several blocks of agricultural properties covered under the impugned common judgment, only one block No.574 admeasuring 416 sq. mtr. in Land Reference Case No.132/91 in First Appeal No.2149/2001, is the new tenure land, for which learned counsel for the respondent-original claimants, has not opposed to this submission for the reason that negligible parcel of land and negligible amount is involved. Therefore, without entering into the legality of this aspect and keeping it open, the amount of 5 per cent refused to be deducted by the reference Court in respect of that parcel of land as referred to hereinabove, is required to be deducted and, obviously, therefore, to that extent, the award requires to be modified.

Therefore, it is hereby directed that 5% Government share shall be deducted from the amount of compensation due and payable in respect of the said parcel of land, and First Appeal No.2149/2001 which covers the said land shall stand allowed to that extent and other appeals are required to be dismissed.

By way of clarification for abundant precaution, the amount of interest shall be paid on the amount of compensation under section 23(1) as no interest is payable on the amount of solatium and additional compensation under section 23(1)(a) of the Act. With this clarification and modification and aforesaid observations, this group of appeals shall stand disposed of without any order as to costs.

Before parting, our attention was drawn that the respondents, original-claimants, have not been paid the amount of market price by way of compensation as directed by the reference Court. Therefore, the appellants are directed to deposit the amount as directed by the reference Court except with little modification in respect of First Appeal No.2149/2001, within a period of four months from today.

(J.N.Bhatt, J.)

(J.R.Vora, J.)

(vjn)